

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1053**

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**Introduced by Assembly Member Solorio**

February 27, 2009

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An act to ~~amend Section 707 of~~ *add Section 1766.3* to the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1053, as amended, Solorio. Juveniles.

*Existing law requires the Department of Corrections, Division of Juvenile Justice, not less than 30 days prior to the scheduled parole consideration hearing of a ward eligible for release on parole on or after September 1, 2007, as specified, to notify the ward of the date and location of the parole consideration hearing. Existing law provides that the ward has the right to contact his or her parent or guardian to inform the parent or guardian of the date and location of the parole consideration hearing, and to inform other persons identified by the ward who are considered by the division as likely to contribute to a ward's preparation for the parole consideration hearing or the ward's postrelease success. An appropriate staff person is required, on specified occasions, to explain these rights to the ward. The committing court is required, within 15 court days of the release by the division of the ward, to convene a reentry disposition hearing for the ward to identify those conditions of probation that are appropriate under all the circumstances of the case, including incorporating a reentry plan. The county of commitment is required to supervise the reentry of those wards. However, none of these provisions apply to a ward who was committed*

to the custody of the division for specified offenses, including murder, kidnapping, and certain sex offenses.

*This bill would require the division to place each ward in its custody on supervised parole within 90 to 120 days prior to discharge from custody, as specified. The bill would require the division to provide prerelease planning to all wards to facilitate their transition into the community and to aid the Division of Juvenile Parole Operations in promptly connecting wards with necessary services, resources, and placements upon parole.*

~~Existing law provides that a minor who has committed any one of specified serious or violent felonies when he or she has attained 16 years of age, or, under certain circumstances, 14 years of age, may be found to be not a fit and proper subject to be dealt with under juvenile court law. In that case, the minor may be prosecuted under the general law in a court of criminal jurisdiction. Because this provision was contained in Proposition 21, the Gang Violence and Juvenile Crime Prevention Act of 1998, an initiative statute, an amendment to the provision requires a 2/3 vote of the membership of each house of the Legislature.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1766.3 is added to the Welfare and*  
2     *Institutions Code, to read:*

3     1766.3. (a) *Each ward committed to the custody of the Division*  
4     *of Juvenile Facilities shall be placed on supervised parole within*  
5     *90 to 120 days prior to discharge from custody pursuant to Section*  
6     *1176, 1766, 1769, 1770, or 1771.*

7     (b) *The division shall provide prerelease planning to all wards*  
8     *to facilitate their transition into the community and to aid the*  
9     *Division of Juvenile Parole Operations in promptly connecting*  
10    *wards with necessary services, resources, and placements upon*  
11    *parole.*

12    ~~SECTION 1. Section 707 of the Welfare and Institutions Code~~  
13    ~~is amended to read:~~

1     ~~707. (a) (1) In any case in which a minor is alleged to be a~~  
2 ~~person described in subdivision (a) of Section 602 by reason of~~  
3 ~~the violation, when he or she was 16 years of age or older, of any~~  
4 ~~criminal statute or ordinance except those listed in subdivision (b),~~  
5 ~~upon motion of the petitioner made prior to the attachment of~~  
6 ~~jeopardy the court shall cause the probation officer to investigate~~  
7 ~~and submit a report on the behavioral patterns and social history~~  
8 ~~of the minor being considered for a determination of unfitness.~~  
9 ~~Following submission and consideration of the report, and of any~~  
10 ~~other relevant evidence that the petitioner or the minor may wish~~  
11 ~~to submit, the juvenile court may find that the minor is not a fit~~  
12 ~~and proper subject to be dealt with under the juvenile court law if~~  
13 ~~it concludes that the minor would not be amenable to the care,~~  
14 ~~treatment, and training programs available through the facilities~~  
15 ~~of the juvenile court, based upon an evaluation of the following~~  
16 ~~criteria:~~

17     ~~(A) The degree of criminal sophistication exhibited by the minor.~~

18     ~~(B) Whether the minor can be rehabilitated prior to the~~  
19 ~~expiration of the juvenile court's jurisdiction.~~

20     ~~(C) The minor's previous delinquent history.~~

21     ~~(D) Success of previous attempts by the juvenile court to~~  
22 ~~rehabilitate the minor.~~

23     ~~(E) The circumstances and gravity of the offense alleged in the~~  
24 ~~petition to have been committed by the minor.~~

25     ~~A determination that the minor is not a fit and proper subject to~~  
26 ~~be dealt with under the juvenile court law may be based on any~~  
27 ~~one or a combination of the factors set forth above, which shall be~~  
28 ~~recited in the order of unfitness. In any case in which a hearing~~  
29 ~~has been noticed pursuant to this section, the court shall postpone~~  
30 ~~the taking of a plea to the petition until the conclusion of the fitness~~  
31 ~~hearing, and no plea that may have been entered already shall~~  
32 ~~constitute evidence at the hearing.~~

33     ~~(2) (A) This paragraph shall apply to a minor alleged to be a~~  
34 ~~person described in Section 602 by reason of the commission,~~  
35 ~~when he or she has attained 16 years of age, of any felony offense~~  
36 ~~when the minor has been declared to be a ward of the court~~  
37 ~~pursuant to Section 602 on one or more prior occasions if both of~~  
38 ~~the following apply:~~

39     ~~(i) The minor has previously been found to have committed two~~  
40 ~~or more felony offenses.~~

1     (ii) ~~The offenses upon which the prior petition or petitions were~~  
2 ~~based were committed when the minor had attained 14 years of~~  
3 ~~age.~~

4     (B) ~~Upon motion of the petitioner made prior to the attachment~~  
5 ~~of jeopardy the court shall cause the probation officer to investigate~~  
6 ~~and submit a report on the behavioral patterns and social history~~  
7 ~~of the minor being considered for a determination of unfitness.~~  
8 ~~Following submission and consideration of the report, and of any~~  
9 ~~other relevant evidence that the petitioner or the minor may wish~~  
10 ~~to submit, the minor shall be presumed to be not a fit and proper~~  
11 ~~subject to be dealt with under the juvenile court law unless the~~  
12 ~~juvenile court concludes, based upon evidence, which evidence~~  
13 ~~may be of extenuating or mitigating circumstances, that the minor~~  
14 ~~would be amenable to the care, treatment, and training programs~~  
15 ~~available through the facilities of the juvenile court based upon an~~  
16 ~~evaluation of the following criteria:~~

17     (i) ~~The degree of criminal sophistication exhibited by the minor.~~

18     (ii) ~~Whether the minor can be rehabilitated prior to the expiration~~  
19 ~~of the juvenile court's jurisdiction.~~

20     (iii) ~~The minor's previous delinquent history.~~

21     (iv) ~~Success of previous attempts by the juvenile court to~~  
22 ~~rehabilitate the minor.~~

23     (v) ~~The circumstances and gravity of the offense alleged in the~~  
24 ~~petition to have been committed by the minor.~~

25     A determination that the minor is a fit and proper subject to be  
26 dealt with under the juvenile court law shall be based on a finding  
27 of amenability after consideration of the criteria set forth above,  
28 and findings therefore recited in the order as to each of the above  
29 criteria that the minor is fit and proper under each and every one  
30 of the above criteria. In making a finding of fitness, the court may  
31 consider extenuating and mitigating circumstances in evaluating  
32 each of the above criteria. In any case in which the hearing has  
33 been noticed pursuant to this section, the court shall postpone the  
34 taking of a plea to the petition until the conclusion of the fitness  
35 hearing and no plea which may have been entered already shall  
36 constitute evidence at the hearing. If the minor is found to be a fit  
37 and proper subject to be dealt with under the juvenile court law  
38 pursuant to this subdivision, the minor shall be committed to  
39 placement in a juvenile hall, ranch camp, forestry camp, boot camp,  
40 or secure juvenile home pursuant to Section 730, or in any

1 ~~institution operated by the Department of Corrections and~~  
2 ~~Rehabilitation, Division of Juvenile Facilities.~~

3 ~~(3) If, pursuant to this subdivision, the minor is found to be not~~  
4 ~~a fit and proper subject for juvenile court treatment and is tried in~~  
5 ~~a court of criminal jurisdiction and found guilty by the trier of fact,~~  
6 ~~the judge may commit the minor to the Department of Corrections~~  
7 ~~and Rehabilitation, Division of Juvenile Facilities, in lieu of~~  
8 ~~sentencing the minor to the state prison, unless the limitations~~  
9 ~~specified in Section 1732.6 apply.~~

10 ~~(b) Subdivision (c) shall be applicable in any case in which a~~  
11 ~~minor is alleged to be a person described in Section 602 by reason~~  
12 ~~of the commission of one of the following offenses:~~

13 ~~(1) Murder.~~

14 ~~(2) Arson, as provided in subdivision (a) or (b) of Section 451~~  
15 ~~of the Penal Code.~~

16 ~~(3) Robbery.~~

17 ~~(4) Rape with force, violence, or threat of great bodily harm.~~

18 ~~(5) Sodomy by force, violence, duress, menace, or threat of~~  
19 ~~great bodily harm.~~

20 ~~(6) A lewd or lascivious act as provided in subdivision (b) of~~  
21 ~~Section 288 of the Penal Code.~~

22 ~~(7) Oral copulation by force, violence, duress, menace, or threat~~  
23 ~~of great bodily harm.~~

24 ~~(8) An offense specified in subdivision (a) of Section 289 of~~  
25 ~~the Penal Code.~~

26 ~~(9) Kidnapping for ransom.~~

27 ~~(10) Kidnapping for purposes of robbery.~~

28 ~~(11) Kidnapping with bodily harm.~~

29 ~~(12) Attempted murder.~~

30 ~~(13) Assault with a firearm or destructive device.~~

31 ~~(14) Assault by any means of force likely to produce great bodily~~  
32 ~~injury.~~

33 ~~(15) Discharge of a firearm into an inhabited or occupied~~  
34 ~~building.~~

35 ~~(16) An offense described in Section 1203.09 of the Penal Code.~~

36 ~~(17) An offense described in Section 12022.5 or 12022.53 of~~  
37 ~~the Penal Code.~~

38 ~~(18) A felony offense in which the minor personally used a~~  
39 ~~weapon listed in subdivision (a) of Section 12020 of the Penal~~  
40 ~~Code.~~

1     ~~(19) A felony offense described in Section 136.1 or 137 of the~~  
2     ~~Penal Code.~~

3     ~~(20) Manufacturing, compounding, or selling one-half ounce~~  
4     ~~or more of a salt or solution of a controlled substance specified in~~  
5     ~~subdivision (e) of Section 11055 of the Health and Safety Code.~~

6     ~~(21) A violent felony, as defined in subdivision (c) of Section~~  
7     ~~667.5 of the Penal Code, that also would constitute a felony~~  
8     ~~violation of subdivision (b) of Section 186.22 of the Penal Code.~~

9     ~~(22) Escape, by the use of force or violence, from a county~~  
10    ~~juvenile hall, home, ranch, camp, or forestry camp in violation of~~  
11    ~~subdivision (b) of Section 871 if great bodily injury is intentionally~~  
12    ~~inflicted upon an employee of the juvenile facility during the~~  
13    ~~commission of the escape.~~

14    ~~(23) Torture as described in Sections 206 and 206.1 of the Penal~~  
15    ~~Code.~~

16    ~~(24) Aggravated mayhem, as described in Section 205 of the~~  
17    ~~Penal Code.~~

18    ~~(25) Carjacking, as described in Section 215 of the Penal Code,~~  
19    ~~while armed with a dangerous or deadly weapon.~~

20    ~~(26) Kidnapping for purposes of sexual assault, as punishable~~  
21    ~~in subdivision (b) of Section 209 of the Penal Code.~~

22    ~~(27) Kidnapping as punishable in Section 209.5 of the Penal~~  
23    ~~Code.~~

24    ~~(28) The offense described in subdivision (c) of Section 12034~~  
25    ~~of the Penal Code.~~

26    ~~(29) The offense described in Section 12308 of the Penal Code.~~

27    ~~(30) Voluntary manslaughter, as described in subdivision (a)~~  
28    ~~of Section 192 of the Penal Code.~~

29    ~~(e) With regard to a minor alleged to be a person described in~~  
30    ~~Section 602 by reason of the commission, when he or she was 14~~  
31    ~~years of age or older, of any of the offenses listed in subdivision~~  
32    ~~(b), upon motion of the petitioner made prior to the attachment of~~  
33    ~~jeopardy the court shall cause the probation officer to investigate~~  
34    ~~and submit a report on the behavioral patterns and social history~~  
35    ~~of the minor being considered for a determination of unfitness.~~  
36    ~~Following submission and consideration of the report, and of any~~  
37    ~~other relevant evidence that the petitioner or the minor may wish~~  
38    ~~to submit, the minor shall be presumed to be not a fit and proper~~  
39    ~~subject to be dealt with under the juvenile court law unless the~~  
40    ~~juvenile court concludes, based upon evidence, which evidence~~

1 may be of extenuating or mitigating circumstances, that the minor  
2 would be amenable to the care, treatment, and training programs  
3 available through the facilities of the juvenile court based upon an  
4 evaluation of each of the following criteria:

5 (1) ~~The degree of criminal sophistication exhibited by the minor.~~

6 (2) ~~Whether the minor can be rehabilitated prior to the expiration  
7 of the juvenile court's jurisdiction.~~

8 (3) ~~The minor's previous delinquent history.~~

9 (4) ~~Success of previous attempts by the juvenile court to  
10 rehabilitate the minor.~~

11 (5) ~~The circumstances and gravity of the offenses alleged in the  
12 petition to have been committed by the minor.~~

13 A determination that the minor is a fit and proper subject to be  
14 dealt with under the juvenile court law shall be based on a finding  
15 of amenability after consideration of the criteria set forth above,  
16 and findings therefore recited in the order as to each of the above  
17 criteria that the minor is fit and proper under each and every one  
18 of the above criteria. In making a finding of fitness, the court may  
19 consider extenuating or mitigating circumstances in evaluating  
20 each of the above criteria. In any case in which a hearing has been  
21 noticed pursuant to this section, the court shall postpone the taking  
22 of a plea to the petition until the conclusion of the fitness hearing  
23 and no plea which may have been entered already shall constitute  
24 evidence at the hearing. If, pursuant to this subdivision, the minor  
25 is found to be not a fit and proper subject for juvenile court  
26 treatment and is tried in a court of criminal jurisdiction and found  
27 guilty by the trier of fact, the judge may commit the minor to the  
28 Department of Corrections and Rehabilitation, Division of Juvenile  
29 Facilities, in lieu of sentencing the minor to the state prison, unless  
30 the limitations specified in Section 1732.6 apply.

31 (d) (1) ~~Except as provided in subdivision (b) of Section 602,  
32 the district attorney or other appropriate prosecuting officer may  
33 file an accusatory pleading in a court of criminal jurisdiction  
34 against any minor 16 years of age or older who is accused of  
35 committing an offense enumerated in subdivision (b).~~

36 (2) ~~Except as provided in subdivision (b) of Section 602, the  
37 district attorney or other appropriate prosecuting officer may file  
38 an accusatory pleading against a minor 14 years of age or older in  
39 a court of criminal jurisdiction in any case in which any one or  
40 more of the following circumstances apply:~~

1     (A) ~~The minor is alleged to have committed an offense that if~~  
2     ~~committed by an adult would be punishable by death or~~  
3     ~~imprisonment in the state prison for life.~~

4     (B) ~~The minor is alleged to have personally used a firearm~~  
5     ~~during the commission or attempted commission of a felony, as~~  
6     ~~described in Section 12022.5 or 12022.53 of the Penal Code.~~

7     (C) ~~The minor is alleged to have committed an offense listed~~  
8     ~~in subdivision (b) in which any one or more of the following~~  
9     ~~circumstances apply:~~

10    (i) ~~The minor has previously been found to be a person described~~  
11    ~~in Section 602 by reason of the commission of an offense listed~~  
12    ~~in subdivision (b).~~

13    (ii) ~~The offense was committed for the benefit of, at the direction~~  
14    ~~of, or in association with any criminal street gang, as defined in~~  
15    ~~subdivision (f) of Section 186.22 of the Penal Code, with the~~  
16    ~~specific intent to promote, further, or assist in criminal conduct by~~  
17    ~~gang members.~~

18    (iii) ~~The offense was committed for the purpose of intimidating~~  
19    ~~or interfering with any other person's free exercise or enjoyment~~  
20    ~~of a right secured to him or her by the Constitution or laws of this~~  
21    ~~state or by the Constitution or laws of the United States and because~~  
22    ~~of the other person's race, color, religion, ancestry, national origin,~~  
23    ~~disability, gender, or sexual orientation, or because the minor~~  
24    ~~perceives that the other person has one or more of those~~  
25    ~~characteristics, as described in Title 11.6 (commencing with~~  
26    ~~Section 422.55) of Part 1 of the Penal Code.~~

27    (iv) ~~The victim of the offense was 65 years of age or older, or~~  
28    ~~blind, deaf, quadriplegic, paraplegic, developmentally disabled,~~  
29    ~~or confined to a wheelchair, and that disability was known or~~  
30    ~~reasonably should have been known to the minor at the time of~~  
31    ~~the commission of the offense.~~

32    (3) ~~Except as provided in subdivision (b) of Section 602, the~~  
33    ~~district attorney or other appropriate prosecuting officer may file~~  
34    ~~an accusatory pleading in a court of criminal jurisdiction against~~  
35    ~~any minor 16 years of age or older who is accused of committing~~  
36    ~~one or more of the following offenses, if the minor has previously~~  
37    ~~been found to be a person described in Section 602 by reason of~~  
38    ~~the commission of a felony offense, when he or she was 14 years~~  
39    ~~of age or older:~~



1     (A) A felony offense in which it is alleged that the victim of the  
2 offense was 65 years of age or older, or blind, deaf, quadriplegic,  
3 paraplegic, developmentally disabled, or confined to a wheelchair,  
4 and that disability was known or reasonably should have been  
5 known to the minor at the time of the commission of the offense.

6     (B) A felony offense committed for the purposes of intimidating  
7 or interfering with any other person's free exercise or enjoyment  
8 of a right secured to him or her by the Constitution or laws of this  
9 state or by the Constitution or laws of the United States and because  
10 of the other person's race, color, religion, ancestry, national origin,  
11 disability, gender, or sexual orientation, or because the minor  
12 perceived that the other person had one or more of those  
13 characteristics, as described in Title 11.6 (commencing with  
14 Section 422.55) of Part 1 of the Penal Code.

15     (C) The offense was committed for the benefit of, at the direction  
16 of, or in association with any criminal street gang as prohibited by  
17 Section 186.22 of the Penal Code.

18     (4) In any case in which the district attorney or other appropriate  
19 prosecuting officer has filed an accusatory pleading against a minor  
20 in a court of criminal jurisdiction pursuant to this subdivision, the  
21 case shall then proceed according to the laws applicable to a  
22 criminal case. In conjunction with the preliminary hearing as  
23 provided in Section 738 of the Penal Code, the magistrate shall  
24 make a finding that reasonable cause exists to believe that the  
25 minor comes within this subdivision. If reasonable cause is not  
26 established, the criminal court shall transfer the case to the juvenile  
27 court having jurisdiction over the matter.

28     (5) For an offense for which the prosecutor may file the  
29 accusatory pleading in a court of criminal jurisdiction pursuant to  
30 this subdivision, but elects instead to file a petition in the juvenile  
31 court, if the minor is subsequently found to be a person described  
32 in subdivision (a) of Section 602, the minor shall be committed to  
33 placement in a juvenile hall, ranch camp, forestry camp, boot camp,  
34 or secure juvenile home pursuant to Section 730, or in any  
35 institution operated by the Department of Corrections and  
36 Rehabilitation, Division of Juvenile Facilities.

37     (6) If, pursuant to this subdivision, the minor is found to be not  
38 a fit and proper subject for juvenile court treatment and is tried in  
39 a court of criminal jurisdiction and found guilty by the trier of fact,  
40 the judge may commit the minor to the Department of Corrections

1 and Rehabilitation, Division of Juvenile Facilities, in lieu of  
2 sentencing the minor to the state prison, unless the limitations  
3 specified in Section 1732.6 apply.  
4 (e) A report submitted by a probation officer pursuant to this  
5 section regarding the behavioral patterns and social history of the  
6 minor being considered for a determination of unfitness shall  
7 include any written or oral statement offered by the victim, the  
8 victim's parent or guardian if the victim is a minor, or if the victim  
9 has died, the victim's next of kin, as authorized by subdivision (b)  
10 of Section 656.2. Victims' statements shall be considered by the  
11 court to the extent they are relevant to the court's determination  
12 of unfitness.

O